

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ROBERT GONZALES,

Plaintiff,

v.

No. 12-cv-0466 MCA/SMV

STATE OF NM PRISONS,
UNKNOWN C.O.
UNKNOWN C.O. AT R.D.C.,
UNKNOWN LT. AT R.D.C.,
MEDICAL SERVICES AT R.D.C.,
ANY ADDITIONAL R.D.C. STAFF WHO
WERE INVOLVED IN INCIDENT,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter is before the Court, *sua sponte* under 28 U.S.C. § 1915(e)(2) and rule 12(b)(6) of the Federal Rules of Civil Procedure, on Plaintiff's civil rights complaint. Plaintiff is incarcerated, appears pro se, and is proceeding in forma pauperis. For reasons set out below, certain of Plaintiff's claims will be dismissed.

The Court has the discretion to dismiss an in forma pauperis complaint *sua sponte* under §1915(e)(2) "at any time if . . . the action . . . is frivolous or malicious; [or] fails to state a claim on which relief may be granted." The Court also may dismiss a complaint *sua sponte* under Fed. R. Civ. P. 12(b)(6) for failure to state a claim if "it is 'patently obvious' that the plaintiff could not prevail on the facts alleged, and allowing him an opportunity to amend his complaint would be futile." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (quoting *McKinney v. Oklahoma, Dep't of Human Services*, 925 F.2d 363, 365 (10th Cir. 1991)). A plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In reviewing Plaintiff's pro se complaint, the Court applies the same legal standards

applicable to pleadings drafted by counsel but liberally construes the allegations. *See Northington v. Jackson*, 973 F.2d 1518, 1520-21 (10th Cir. 1992).

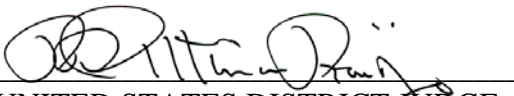
As noted in the Court's earlier third order to show cause (Doc. 13), the complaint alleges that unnamed correctional officers injured Plaintiff by using excessive force. The incident occurred at the "R.D.C." in Los Lunas, New Mexico, at 7:45 p.m. on February 22, 2012. In his response to the show cause order, Plaintiff identified Sgt. Black as the "Unknown C.O. at R.D.C." and Lt. Sprunk as the "Unknown LT. at R.D.C." The Court will substitute Sgt. Black for Defendant Unknown C.O. at R.D.C. and Lt. Sprunk for Defendant Unknown Lt. at R.D.C. Claims against the other original Defendants will be dismissed, and notice and waiver of service forms will be issued for Defendants Black and Sprunk.

IT IS THEREFORE ORDERED that Plaintiff's motions to serve Defendants and for *Martinez* report (Docs. 7, 10) are DENIED without prejudice;

IT IS FURTHER ORDERED that Plaintiff's claims against Defendants State of New Mexico, Unknown C.O., Medical Services at R.D.C., and Any Additional R.D.C. Staff Who Were Involved in Incident are DISMISSED; and Defendants State of New Mexico, Unknown C.O., Medical Services at R.D.C., and Any Additional R.D.C. Staff Who Were Involved in Incident are DISMISSED as parties to this action;

IT IS FURTHER ORDERED that the Clerk is directed to issue notice and waiver of service forms, with copies of the complaint, for Defendants Black and Sprunk.

Dated this 31st day of December, 2012.


UNITED STATES DISTRICT JUDGE